

(13) Pay a percentage of *the defendant's* [his] income to *the defendant's* [his] dependents for their support while under custodial supervision in a community corrections facility;

(14) Submit to testing for alcohol or controlled substances;

(15) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse;

(16) With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation;

(17) Submit to electronic monitoring;

(18) Reimburse the *compensation to victims of crime* [general revenue] fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56.32 [56.01 of this code], of the defendant's offense, or if no reimbursement is required, make one payment to the *compensation to victims of crime* fund in an amount not to exceed \$50 if the offense is a misdemeanor or not to exceed \$100 if the offense is a felony;

(19) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

(20) Pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;

(21) Make one payment in an amount not to exceed \$50 to a crime stoppers organization as defined by Section 414.001, Government Code, and as certified by the Crime Stoppers Advisory Council;

(22) Submit a blood sample or other specimen to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant; and

(23) In any manner required by the judge, provide public notice of the offense for which the defendant was placed on community supervision in the county in which the offense was committed.

SECTION 3. The changes in law made by this Act apply only to an order of restitution that is entered or a condition of community supervision that is imposed on or after September 1, 2005. An order of restitution that is entered or a condition of community supervision that is imposed before September 1, 2005, is governed by the law in effect on the date the order was entered or the condition was imposed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

Passed by the House on April 14, 2005, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1751 on May 27, 2005, by a non-record vote; passed by the Senate, with amendments, on May 25, 2005: Yeas 31, Nays 0.

Approved June 18, 2005.

Effective September 1, 2005.

## CHAPTER 970

### H.B. No. 1763

#### AN ACT

relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 16.053, Water Code, is amended by amending Subsections (e) and (p) and adding Subsections (p-1), (p-2), (p-3), and (p-4) to read as follows:

(e) Each regional water planning group shall submit to the *development* board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the *development* board under Section 16.051(d);

(2) provides information based on data provided or approved by the *development* board in a format consistent with the guidelines provided by the *development* board under Subsection (d);

(3) identifies:

(A) each source of water supply in the regional water planning area, *including information supplied by the executive administrator on the amount of managed available groundwater* in accordance with the guidelines provided by the *development* board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response; and

(C) actions to be taken as part of the response;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) *approved* ~~[certified]~~ groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, *conjunctive use*, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

(p) If a groundwater conservation district files a petition with the *development* board stating that a conflict requiring resolution may exist between the district's *approved* ~~[certified groundwater conservation district]~~ management plan developed under Section 36.1071 and an ~~[the]~~ *approved state* ~~[regional]~~ water plan, the *development* board shall *provide technical assistance to and* facilitate coordination between the district and the involved region to resolve the conflict. *Not later than the 45th day after the date the groundwater conservation*

*district files a petition with the development board, if the conflict has not been resolved, the district and the involved region shall mediate the conflict. The district and the involved region may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved region cannot resolve the conflict through mediation ~~remains~~, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed as provided by Subsections (p-1) and (p-2).*

*(p-1) If the development board determines that resolution of the conflict requires a revision of an approved regional water plan, the development board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by the development board and shall hold, after notice, at least one public hearing at some central location within the regional water planning area. The regional water planning group shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval and inclusion in the state water plan.*

*(p-2) If the development board determines that resolution of the conflict requires a revision of the district's approved ~~[certified]~~ groundwater conservation district management plan, the development board shall ~~[suspend the certification of that plan and]~~ provide information to the district. The groundwater district shall prepare any revisions to its plan based on the information provided ~~[specified]~~ by the development board and shall hold, after notice, at least one public hearing at some central location within the district. The groundwater district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board ~~[for certification]~~.*

*(p-3) If the groundwater conservation district disagrees with the decision of the development board under Subsection (p), the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.*

*(p-4) On the request of the involved region or groundwater conservation district, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e).*

SECTION 2. Section 36.001, Water Code, is amended by striking Subdivision (17) and adding Subdivisions (4-a) and (24) through (29) to read as follows:

*(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture.*

~~[(17) "Applicant" means a newly confirmed district applying for a loan from the loan fund.]~~

*(24) "Total aquifer storage" means the total calculated volume of groundwater that an aquifer is capable of producing.*

*(25) "Managed available groundwater" means the amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer as determined under Section 36.108.*

*(26) "Recharge" means the amount of water that infiltrates to the water table of an aquifer.*

*(27) "Inflows" means the amount of water that flows into an aquifer from another formation.*

*(28) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.*

(29) "Evidence of historic or existing use" means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by district rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

SECTION 3. Section 36.101, Water Code, is amended by amending Subsection (b) and adding Subsections (d)–(l) to read as follows:

(b) *Except as provided by Section 36.1011, after [After] notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board. [Notice in this section shall include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.]*

(d) *Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:*

- (1) post notice in a place readily accessible to the public at the district office;*
- (2) provide notice to the county clerk of each county in the district;*
- (3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;*
- (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i); and*
- (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the district has a website, post an electronic copy on a generally accessible Internet site.*

(e) *The notice provided under Subsection (d) must include:*

- (1) the time, date, and location of the rulemaking hearing;*
- (2) a brief explanation of the subject of the rulemaking hearing; and*
- (3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.*

(f) *The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.*

(g) *A district may require each person who participates in a rulemaking hearing to submit a hearing registration form stating:*

- (1) the person's name;*
- (2) the person's address; and*
- (3) whom the person represents, if the person is not at the hearing in the person's individual capacity.*

(h) *The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.*

(i) *A person may submit to the district a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.*

(j) A district may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

(k) Failure to provide notice under Subsection (d)(4) does not invalidate an action taken by the district at a rulemaking hearing.

(l) Subsections (b)–(k) do not apply to the Edwards Aquifer Authority.

SECTION 4. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1011 to read as follows:

*Sec. 36.1011. EMERGENCY RULES.* (a) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its finding under Subdivision (1).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

(e) This section does not apply to the Edwards Aquifer Authority.

SECTION 5. Sections 36.1071(a), (b), and (d)–(h), Water Code, are amended to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions; ~~and~~

(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) addressing in a quantitative manner the desired future conditions of the groundwater resources.

(b) A ~~[After January 5, 2002, a]~~ district management plan, or any amendments to a district management plan, shall be developed by the district using the district's best available data and forwarded to the regional water planning group for use ~~[consideration]~~ in their planning process.

(d) The commission shall provide technical assistance to a district during its initial operational phase. *If requested by a district, the Texas Water Development Board shall train the district on basic data collection methodology and provide technical assistance to districts.*

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) *managed available* ~~[the existing total usable amount of]~~ groundwater in the district *based on the desired future condition established under Section 36.108*;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge *from precipitation*, if any, to the groundwater resources within the district ~~[and how natural or artificial recharge may be increased];~~ ~~[and]~~

(D) *for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;*

(E) *the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;*

(F) *the projected surface water supply in the district according to the most recently adopted state water plan; and*

(G) *the projected total demand for water in the district according to the most recently adopted state water plan* ~~[projected water supply and demand for water within the district]; and~~

(4) *consider the* ~~[address]~~ water supply needs *and water management strategies included in* ~~[a manner that is not in conflict with]~~ the adopted state ~~[appropriate approved regional]~~ water plan ~~[if a regional water plan has been approved under Section 16.053].~~

(f) The district shall adopt rules necessary to implement the management plan. *Prior to the development of the management plan and its approval under Section 36.1072, the district may not adopt rules other than rules pertaining to the registration and interim permitting of new and existing wells and rules governing spacing and procedure before the district's board; however, the district may not adopt any rules limiting the production of wells, except rules requiring that groundwater produced from a well be put to a nonwasteful, beneficial use. The district may accept applications for permits under Section 36.113, provided the district does not act on any such application until the district's management plan is approved as provided in Section 36.1072.*

(g) The district ~~[board]~~ shall adopt amendments to the management plan as necessary. Amendments to the management plan shall be adopted after notice and hearing and shall otherwise comply with the requirements of this section.

(h) In developing its management plan, the district shall use the groundwater availability modeling information provided by the executive administrator *together* ~~[in conjunction]~~ with any available site-specific information *that has been provided by the district to the executive administrator for review and comment before being used in the plan* ~~[and acceptable to the executive administrator].~~

SECTION 6. Section 36.1072, Water Code, is amended to read as follows:

Sec. 36.1072. **TEXAS WATER DEVELOPMENT BOARD REVIEW AND APPROVAL [CERTIFICATION] OF MANAGEMENT PLAN.** (a) A district shall, not later than ~~three~~ ~~[two]~~ years after the creation of the district or, if the district required confirmation, after the election confirming the district's creation, submit the management plan required under Section 36.1071 to the executive administrator for review and *approval* ~~[certification]~~.

(b) Within 60 days of receipt of a management plan adopted under Section 36.1071, *readopted under Subsection (e) or (g) of this section, or amended under Section 36.1073,* the executive administrator shall *approve* ~~[certify]~~ a management plan if the plan is administratively complete. A management plan is administratively complete when it contains the information required to be submitted under Section 36.1071(a) *and (e).* The executive administrator may determine *whether* ~~[that]~~ conditions justify waiver of the requirements under Section 36.1071(e)(4).

(c) *Once the executive administrator has approved a* ~~[determination that a]~~ management plan ~~[is administratively complete has been made]:~~

(1) the executive administrator may not revoke *but may require revisions to the approved groundwater conservation district management plan as provided by Subsection (g)* ~~[determination that a management plan is administratively complete]; and~~

(2) the executive administrator may request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material, ~~but~~—and

~~[(3)]~~ a request for additional information does not render the management plan *unapproved* ~~[incomplete]~~.

(d) A management plan takes effect on *approval* ~~[certification]~~ by the executive administrator or, if appealed, on *approval* ~~[certification]~~ by the Texas Water Development Board.

(e) The *district* ~~[board]~~ may review the plan annually and must review and readopt the plan with or without revisions at least once every five years. *The district shall provide the readopted plan to the executive administrator not later than the 60th day after the date on which the plan was readopted. Approval of the preceding management plan remains in effect until:*

*(1) the district fails to timely readopt a management plan;*

*(2) the district fails to timely submit the district's readopted management plan to the executive administrator; or*

*(3) the executive administrator determines that the readopted management plan does not meet the requirements for approval, and the district has exhausted all appeals to the Texas Water Development Board or appropriate court.*

(f) If the executive administrator does not *approve* ~~[certify]~~ the management plan, the executive administrator shall provide to the district, in writing, the reasons for the action. Not later than the 180th day after the date a district receives notice that its management plan has not been *approved* ~~[certified]~~, the district may submit a revised management plan for review and *approval* ~~[certification]~~. The executive administrator's decision may be appealed to the Texas Water Development Board. *If the Texas Water Development Board decides not to approve the management plan on appeal, the district may request that the conflict be mediated. The district and the board may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the parties do not resolve the conflict through mediation, the [The] decision of the Texas Water Development Board not [on whether] to approve [certify] the management plan may [not] be appealed to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo. The commission shall not take enforcement action against a district under Subchapter I until the later of the expiration of the 180-day period, [or] the date the Texas Water Development Board has taken final action withholding approval [certification] of a revised management plan, the date the mediation is completed, or the date a final judgment upholding the board's decision is entered by a district court. An enforcement action may not be taken against a district by the commission or the state auditor under Subchapter I because the district's management plan and the approved regional water plan are in conflict while the parties are attempting to resolve the conflict before the development board, in mediation, or in court. Rules of the district continue in full force and effect until all appeals under this subsection have been exhausted and the final judgment is adverse to the district.*

(g) In this subsection, "development board" means the Texas Water Development Board. A person with a legally defined interest in groundwater in a district or the regional water planning group may file a petition with the *development board* stating that a conflict requiring resolution may exist between the district's *approved* ~~[certified groundwater conservation district]~~ management plan developed under Section 36.1071 and the state water plan. If a conflict exists, the *development board* shall *provide technical assistance to and facilitate* coordination between the involved person or regional water planning group and the district to resolve the conflict. *Not later than the 45th day after the date the person or the regional water planning group files a petition with the development board, if the conflict has not been resolved, the district and the involved person or regional planning group may mediate the conflict. The district and the involved person or regional planning group may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas*

School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved person or regional planning group cannot resolve the conflict through mediation ~~[remains]~~, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed. The development board action under this provision may be consolidated, at the option of the board, with related action under Section 16.053(p). If the development board determines that resolution of the conflict requires a revision of the approved ~~[certified]~~ groundwater conservation district management plan, the development board shall ~~[suspend the certification of the plan and]~~ provide information to the district. The district shall prepare any revisions to the plan based on the information provided ~~[specified]~~ by the development board and shall hold, after notice, at least one public hearing at some central location within the district. The district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval ~~[certification]~~. On the request of the district or the regional water planning group, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e). If the groundwater conservation district disagrees with the decision of the development board under this subsection, the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.

SECTION 7. Section 36.1073, Water Code, is amended to read as follows:

Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Any amendment to the management plan shall be submitted to the executive administrator within 60 days following adoption of the amendment by the district's board. The executive administrator shall review and approve ~~[certify]~~ any amendment which substantially affects the management plan in accordance with the procedures established under Section 36.1072.

SECTION 8. Section 36.108, Water Code, is amended to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) *In this section, "development board" means the Texas Water Development Board.*

(b) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion and approval ~~[certification]~~ of the plan as required by Section 36.1072, each district shall forward a copy of the new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.

(c) *The presiding officer, or the presiding officer's designee, of* ~~[(b) The board of directors of]~~ each district located in whole or in part in the management area shall meet at least annually to conduct ~~[may, by resolution, call for]~~ joint planning with the other districts in the management area and to review the management plans and accomplishments for the management area. In reviewing the management plans, the districts ~~[boards]~~ shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally; ~~[and]~~

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall establish desired future conditions for the relevant aquifers within the



*management area. In establishing the desired future conditions of the aquifers under this section, the districts shall consider uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another. The districts may establish different desired future conditions for:*

*(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or*

*(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.*

*(d-1) The desired future conditions established under Subsection (d) must be adopted by a two-thirds vote of the district representatives present at a meeting:*

*(1) at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and*

*(2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code.*

*(d-2) Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.*

*(e) A ~~[(e) If a]~~ joint meeting under this section must be ~~[of the boards of directors is called, the meeting must be]~~ held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act.*

*(f) ~~[(d)]~~ A district or person with a legally defined interest in the groundwater within ~~[in]~~ the management area may file ~~[with good cause]~~ a petition with the commission requesting an inquiry if a ~~[the petitioner district adopted a resolution calling for joint planning and the other]~~ district or districts refused to join in the planning process or the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:*

*(1) a ~~[another]~~ district in the groundwater management area has failed to adopt rules;*

*(2) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area established during the joint planning process;*

*(3) the groundwater in the management area is not adequately protected by the rules adopted by a ~~[another]~~ district; or*

*(4) ~~[(3)]~~ the groundwater in the groundwater management area is not adequately protected due to the failure of a ~~[another]~~ district to enforce substantial compliance with its rules.*

*(g) ~~[(e)]~~ Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:*

*(1) dismiss the petition if the commission ~~[it if it]~~ finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or*

*(2) select a review panel as provided in Subsection (h) ~~[(f)]~~.*

*(h) ~~[(f)]~~ If the petition is not dismissed under Subsection (g) ~~[(e)]~~, the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the groundwater management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.*

*(i) ~~[(g)]~~ Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence*

on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

(j) ~~[(h)]~~ In its report, the review panel shall include:

- (1) a summary of all evidence taken in any hearing on the petition;
- (2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and
- (3) any other information the panel considers appropriate.

(k) ~~[(i)]~~ The review panel shall submit its report to the commission. *The commission may take action under Section 36.3011.*

*(l) A person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.*

*(m) The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.*

*(n) The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.*

*(o) The districts shall submit the conditions established under this section to the executive administrator. The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon the desired future condition of the groundwater resources established under this section.*

(p) ~~[(j)]~~ Districts located within the same groundwater management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

SECTION 9. Section 36.109, Water Code, is amended to read as follows:

Sec. 36.109. COLLECTION OF INFORMATION. A district may collect any information the board deems necessary, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir. *At the request of the executive administrator, the district shall provide any data collected by the district in a format acceptable to the executive administrator.*

SECTION 10. Sections 36.113 and 36.114, Water Code, are amended to read as follows:

Sec. 36.113. PERMITS FOR WELLS; *PERMIT AMENDMENTS*. (a) *Except as provided by Section 36.117, a [A] district shall require a permit [permits] for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require that a change in the withdrawal or use of groundwater*

during the term of a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.

(a-1) A district may not require a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

(b) A district shall require that an application for a permit or a permit amendment be in writing and sworn to.

(c) A district may require that the following be included in the permit or permit amendment application:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission; and

(7) a drought contingency plan.

(d) Before granting or denying a permit or permit amendment, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(e) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase [increased] use by historic users if the limitations:

(1) apply to all subsequent new permit applications and permit amendment applications to increase [increased] use by historic users, regardless of type or location of use;

(2) bear a reasonable relationship to the existing district management plan; and

(3) are reasonably necessary to protect existing use.

(f) Permits and permit amendments may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, [or] alteration, or operation of, or production of groundwater from, [or] wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

~~[(g) A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.]~~

Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING.

(a) The district by rule shall determine each activity regulated by the district for which a permit or permit amendment is required.

(b) *For each activity for which the district determines a permit or permit amendment is required under Subsection (a), the district by rule shall determine whether a hearing on the permit or permit amendment application is required.*

(c) *For all applications for which a hearing is not required under Subsection (b), the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.*

(d) *The district shall promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.*

(e) *If, within 60 [30] days after the date an [the] administratively complete application is submitted, the [an] application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate.*

(f) *For applications requiring a hearing, the initial [A] hearing shall be held within 35 days after the setting of the date, and the district shall act on the application within 60 [35] days after the date [of] the final hearing on the application is concluded.*

(g) *The district may by rule set a time when an application will expire if the information requested in the application is not provided to the district.*

(h) *An administratively complete application requires information set forth in accordance with Sections 36.113 and 36.1131.*

SECTION 11. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1132 to read as follows:

*Sec. 36.1132. PERMITS BASED ON MANAGED AVAILABLE GROUNDWATER. A district, to the extent possible, shall issue permits up to the point that the total volume of groundwater permitted equals the managed available groundwater, if administratively complete permit applications are submitted to the district.*

SECTION 12. Sections 36.116(a) and (b), Water Code, are amended as follows:

(a) *In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate:*

(1) *the spacing of water wells by:*

(A) *requiring all water wells to be spaced a certain distance from property lines or adjoining wells;*

(B) *requiring wells with a certain production capacity, pump size, or other characteristic related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or*

(C) *imposing spacing requirements adopted by the board; and*

(2) *the production of groundwater by:*

(A) *setting production limits on wells;*

(B) *limiting the amount of water produced based on acreage or tract size;*

(C) *limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;*

(D) *limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre; [or]*

(E) *managed depletion; or*

(F) *any combination of the methods listed above in Paragraphs (A) through (E) [(D)].*

(b) *In promulgating any rules limiting groundwater production, the district may preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan under Section 36.1071 and as provided by Section 36.113.*

SECTION 13. Section 36.3011, Water Code, is amended to read as follows:

Sec. 36.3011. FAILURE OF [A] DISTRICT TO CONDUCT JOINT PLANNING. ~~[(a) If the board of a district within a common management area fails to forward a copy of its new or revised certified management plan under Section 36.108, the commission shall take appropriate action under Section 36.303.~~

[(b)] Not later than the 45th day after receiving the review panel's report under Section 36.108, the executive director or the commission shall take action to implement any or all of the panel's recommendations. *The commission may take any action against a district it considers necessary in accordance with Section 36.303 if* [If] the commission finds that:

(1) a district [in the joint planning area] has failed to submit its plan to the executive administrator;

(2) a district has failed to adopt rules;

(3) the rules adopted by the district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area; or

(4) [;] the groundwater in the management area is not adequately protected by the rules adopted by the district, or the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules; ~~the commission may take any action it considers necessary in accordance with Section 36.303].~~

SECTION 14. Section 36.302(d), Water Code, is amended to read as follows:

(d) The state auditor may perform the review under Subsection (a) following the first anniversary of the initial *approval* [certification] of the plan [by the Texas Water Development Board] under Section 36.1072 and at least as often as once every seven years after that date, subject to a risk assessment and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

SECTION 15. Section 36.304(a), Water Code, is amended to read as follows:

(a) The commission may dissolve a district that:

[(1) is not operational, as determined under Section 36.302; and

[(2)] has no outstanding bonded indebtedness.

SECTION 16. Subchapter L, Chapter 36, Water Code, is amended by adding Section 36.3705 to read as follows:

*Sec. 36.3705. DEFINITION. In this subchapter, "applicant" means a newly confirmed district applying for a loan from the loan fund.*

SECTION 17. Chapter 36, Water Code, is amended by adding Subchapter M to read as follows:

#### SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS; NOTICE AND HEARING PROCESS

*Sec. 36.401. DEFINITION. In this subchapter, "applicant" means a person who is applying for a permit or a permit amendment.*

*Sec. 36.402. APPLICABILITY. Except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.*

*Sec. 36.403. SCHEDULING OF HEARING. (a) The general manager or board may schedule a hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.*

*(b) The general manager or board may schedule more than one application for consideration at a hearing.*

*(c) A hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.*

*(d) A hearing may be held in conjunction with a regularly scheduled board meeting.*

*Sec. 36.404. NOTICE. (a) If the general manager or board schedules a hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this section.*

*(b) The notice must include:*

- (1) the name of the applicant;*
- (2) the address or approximate location of the well or proposed well;*
- (3) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;*
- (4) the time, date, and location of the hearing; and*
- (5) any other information the general manager or board considers relevant and appropriate.*

*(c) Not later than the 10th day before the date of a hearing, the general manager or board shall:*

- (1) post notice in a place readily accessible to the public at the district office;*
- (2) provide notice to the county clerk of each county in the district; and*
- (3) provide notice by:*
  - (A) regular mail to the applicant;*
  - (B) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and*
  - (C) regular mail to any other person entitled to receive notice under the rules of the district.*

*(d) A person may request notice from the district of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.*

*(e) Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the district at the hearing.*

*Sec. 36.405. HEARING REGISTRATION. The district may require each person who participates in a hearing to submit a hearing registration form stating:*

- (1) the person's name;*
- (2) the person's address; and*
- (3) whom the person represents, if the person is not there in the person's individual capacity.*

*Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be conducted by:*

- (1) a quorum of the board; or*
- (2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing.*
- (b) Except as provided by Subsection (c), the board president or the hearings examiner shall serve as the presiding officer at the hearing.*

*(c) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.*

*(d) The presiding officer may:*

- (1) convene the hearing at the time and place specified in the notice;*
- (2) set any necessary additional hearing dates;*
- (3) designate the parties regarding a contested application;*
- (4) establish the order for presentation of evidence;*

- (5) administer oaths to all persons presenting testimony;
- (6) examine persons presenting testimony;
- (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
- (8) prescribe reasonable time limits for testimony and the presentation of evidence; and
- (9) exercise the procedural rules adopted under Section 36.415.

(e) Except as provided by a rule adopted under Section 36.415, a district may allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.

(f) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(g) If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

(h) The district by rule adopted under Section 36.417 may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before board action under Section 36.411 that:

- (1) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
- (2) determines how the costs of the procedure shall be apportioned among the parties; and
- (3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

Sec. 36.407. **EVIDENCE.** (a) The presiding officer shall admit evidence that is relevant to an issue at the hearing.

(b) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Sec. 36.408. **RECORDING.** (a) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

(b) If a hearing is uncontested, the presiding officer may substitute minutes or the report required under Section 36.410 for a method of recording the hearing provided by Subsection (a).

Sec. 36.409. **CONTINUANCE.** The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 36.404. If the presiding officer continues a hearing without announcing at the hearing the time, date, and

location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.

**Sec. 36.410. REPORT.** (a) Except as provided by Subsection (e), the presiding officer shall submit a report to the board not later than the 30th day after the date a hearing is concluded.

(b) The report must include:

- (1) a summary of the subject matter of the hearing;
- (2) a summary of the evidence or public comments received; and
- (3) the presiding officer's recommendations for board action on the subject matter of the hearing.

(c) The presiding officer or general manager shall provide a copy of the report to:

- (1) the applicant; and
- (2) each person who provided comments or each designated party.

(d) A person who receives a copy of the report under Subsection (c) may submit to the board written exceptions to the report.

(e) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), the presiding officer shall determine whether to prepare and submit a report to the board under this section.

**Sec. 36.411. BOARD ACTION.** The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

**Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS.** (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the board not later than the 20th day after the date of the board's decision.

(b) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the board receives the request. A person who receives a certified copy of the findings and conclusions from the board may request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

(c) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.

(d) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(e) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

**Sec. 36.413. DECISION; WHEN FINAL.** (a) A decision by the board on a permit or permit amendment application is final:

- (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
- (2) if a request for rehearing is filed on time, on the date:
  - (A) the board denies the request for rehearing; or
  - (B) the board renders a written decision after rehearing.

(b) Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the district under Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.



(c) *An applicant or a party to a contested hearing may not file suit against the district under Section 36.251 if a request for rehearing was not filed on time.*

**Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS.** (a) *Except as provided by Subsection (b), a district shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for:*

- (1) *drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113;*
- (2) *the spacing of water wells or the production of groundwater under Section 36.116; or*
- (3) *transferring groundwater out of a district under Section 36.122.*

(b) *A district is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.*

**Sec. 36.415. RULES; ADDITIONAL PROCEDURES.** (a) *A district by rule shall adopt procedural rules to implement this subchapter and may adopt notice and hearing procedures in addition to those provided by this subchapter.*

(b) *In adopting the rules, a district shall:*

- (1) *define under what circumstances an application is considered contested; and*
- (2) *limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.*

**Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.** *If a district contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.*

**Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION.** *A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.*

**Sec. 36.418. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.** (a) *A district may adopt rules establishing procedures for contested hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code, including the authority to issue a subpoena, require a deposition, or order other discovery.*

(b) *Except as provided by this section and Section 36.416, Chapter 2001, Government Code, does not apply to a hearing under this subchapter.*

**Sec. 36.419. EDWARDS AQUIFER AUTHORITY.** (a) *Except as provided by Subsection (b), this subchapter does not apply to the Edwards Aquifer Authority.*

(b) *Sections 36.412 and 36.413 apply to the Edwards Aquifer Authority.*

**SECTION 18.** Sections 9.017 and 36.001(17), Water Code, are repealed.

**SECTION 19.** The change in law made by this Act applies only to a permit or permit amendment application determined to be administratively complete or a rulemaking hearing for which notice is given by a groundwater conservation district on or after the effective date of this Act. A permit or permit amendment application determined to be administratively complete or a rulemaking hearing for which notice was given by a groundwater conservation district before the effective date of this Act is governed by the law in effect at the time the application was determined to be administratively complete or the notice was given, and the former law is continued in effect for that purpose.

**SECTION 20.** This Act takes effect September 1, 2005.

Passed by the House on May 12, 2005, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1763 on May 24, 2005, by a non-record vote; the House adopted H.C.R. No. 236 authorizing certain corrections in H.B. No. 1763 on May 30, 2005, by a non-record vote; passed by the Senate, with amendments, on

May 23, 2005: Yeas 31, Nays 0; the Senate adopted H.C.R. No. 236 authorizing certain corrections in H.B. No. 1763 on May 30, 2005, by a viva-voce vote.

Approved June 18, 2005.

Effective September 1, 2005.

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CHAPTER 971

H.B. No. 1767

AN ACT

relating to the regulation of veterinary medicine.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 801.351, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) *A person may not practice veterinary medicine unless a veterinarian-client-patient relationship exists.* A veterinarian-client-patient relationship exists if the veterinarian:

(1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;

(2) possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and

(3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or a failure of, the regimen of therapy provided by the veterinarian.

(c) *A veterinarian-client-patient relationship may not be established solely by telephone or electronic means.*

SECTION 2. Section 801.353, Occupations Code, is amended by adding Subsection (f) to read as follows:

(f) *A veterinarian does not violate this section by providing the name or address of a client to a health authority, veterinarian, or physician who requests the identity of the client to obtain information for:*

(1) *the verification of a rabies vaccination; or*

(2) *other treatment involving a life-threatening situation.*

SECTION 3. Sections 801.357(a) and (d), Occupations Code, are amended to read as follows:

(a) A veterinarian may dispose of an animal that is abandoned in the veterinarian's care if the veterinarian:

(1) gives the client, by certified mail to the client's last known address, notice of the veterinarian's intention to dispose of the animal; and

(2) allows the client to retrieve the animal during the 10 [12] days after the date the veterinarian mails the notice.

(d) An animal is considered abandoned on the 11th [13th] day after the date the veterinarian mails the notice under Subsection (a) unless an agreement is made to extend the care for the animal.

SECTION 4. Subchapter H, Chapter 801, Occupations Code, is amended by adding Section 801.3585 to read as follows:

*Sec. 801.3585. LIABILITY FOR REPORTING ANIMAL CRUELTY; IMMUNITY. A veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.*